

By: West

S.B. No. 1235

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to guardianships, including assessments for and provision  
3 of guardianship services by the Department of Aging and Disability  
4 Services.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 59.006(a), Finance Code, is amended to  
7 read as follows:

8 (a) This section provides the exclusive method for  
9 compelled discovery of a record of a financial institution relating  
10 to one or more customers but does not create a right of privacy in a  
11 record. This section does not apply to and does not require or  
12 authorize a financial institution to give a customer notice of:

13 (1) a demand or inquiry from a state or federal  
14 government agency authorized by law to conduct an examination of  
15 the financial institution;

16 (2) a record request from a state or federal  
17 government agency or instrumentality under statutory or  
18 administrative authority that provides for, or is accompanied by, a  
19 specific mechanism for discovery and protection of a customer  
20 record of a financial institution, including a record request from  
21 a federal agency subject to the Right to Financial Privacy Act of  
22 1978 (12 U.S.C. Section 3401 et seq.), as amended, or from the  
23 Internal Revenue Service under Section 1205, Internal Revenue Code  
24 of 1986;

1           (3) a record request from or report to a government  
2 agency arising out of:

3           (A) the investigation or prosecution of a  
4 criminal offense;

5           (B) [~~or~~] the investigation of alleged abuse,  
6 neglect, or exploitation of an elderly or disabled person in  
7 accordance with Chapter 48, Human Resources Code; or

8           (C) the assessment for or provision of  
9 guardianship services under Subchapter E, Chapter 161, Human  
10 Resources Code;

11           (4) a record request in connection with a garnishment  
12 proceeding in which the financial institution is garnishee and the  
13 customer is debtor;

14           (5) a record request by a duly appointed receiver for  
15 the customer;

16           (6) an investigative demand or inquiry from a state  
17 legislative investigating committee;

18           (7) an investigative demand or inquiry from the  
19 attorney general of this state as authorized by law other than the  
20 procedural law governing discovery in civil cases; or

21           (8) the voluntary use or disclosure of a record by a  
22 financial institution subject to other applicable state or federal  
23 law.

24           SECTION 2. Section 1101.104, Estates Code, as effective  
25 January 1, 2014, is amended to read as follows:

26           Sec. 1101.104. EXAMINATIONS AND DOCUMENTATION REGARDING  
27 MENTAL RETARDATION. If mental retardation is the basis of the

1 proposed ward's alleged incapacity, the court may not grant an  
2 application to create a guardianship for the proposed ward unless  
3 the applicant presents to the court a written letter or certificate  
4 that:

5 (1) [~~a written letter or certificate that:~~  
6 [~~(A)~~] complies with Sections 1101.103(a) and  
7 (b) [~~, and~~  
8 [~~(B)~~] states that the physician has made a  
9 determination of mental retardation in accordance with Section  
10 593.005, Health and Safety Code]; or

11 (2) shows that [~~both~~]:  
12 (A) [~~written documentation showing that,~~] not  
13 earlier than 24 months before the hearing date, the proposed ward  
14 has been examined by a physician or psychologist licensed in this  
15 state or certified by the Department of Aging and Disability  
16 Services to perform the examination, in accordance with rules of  
17 the executive commissioner of the Health and Human Services  
18 Commission governing examinations of that kind, [~~, and~~  
19 [~~(B)~~] the physician's or psychologist's written  
20 findings and recommendations include [~~, including a statement as to~~  
21 ~~whether the physician or psychologist has made~~] a determination of  
22 mental retardation; or

23 (B) a physician or psychologist licensed in this  
24 state or certified by the Department of Aging and Disability  
25 Services to perform examinations described by Paragraph (A) updated  
26 or endorsed in writing a prior determination of mental retardation  
27 for the proposed ward made by a physician or psychologist licensed

1 in this state or certified by the department [~~in accordance with~~  
2 ~~Section 593.005, Health and Safety Code~~].

3         SECTION 3. The changes in law made by this Act to Section  
4 1101.104, Estates Code, as effective January 1, 2014, apply only to  
5 an application to create a guardianship filed on or after the  
6 effective date of this Act. An application to create a guardianship  
7 filed before the effective date of this Act is governed by the law  
8 in effect on the date the application was filed, and the former law  
9 is continued in effect for that purpose.

10         SECTION 4. To the extent of any conflict, this Act prevails  
11 over another Act of the 83rd Legislature, Regular Session, 2013,  
12 relating to nonsubstantive additions to and corrections in enacted  
13 codes.

14         SECTION 5. (a) Except as provided by Subsection (b) of this  
15 section, this Act takes effect January 1, 2014.

16         (b) Section 59.006(a), Finance Code, as amended by this Act,  
17 takes effect September 1, 2013.